
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

J4 Broadcasting of Cincinnati, Inc.
WCIN(AM)
Cincinnati, Ohio

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File No. EB-01-DT-657
NAL/Acct. No. 200232360007
FRN: 0004-2892-60

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 20, 2002

By the District Director, Detroit Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that J4 Broadcasting of Cincinnati, Inc., ("J4"), the licensee of radio station WCIN ("WCIN"), Cincinnati, Ohio, has apparently violated Sections 73.51(e)(2) and 73.1560(a)(1) of the Commission's Rules ("Rules")¹. Respectively, these sections require the station maintain a record of the efficiency factor "*F*" in the station records and operate with power not in excess of 105% of the authorized power. We conclude that J4 is apparently liable for a forfeiture in the amount of five thousand dollars (\$5,000).

II. BACKGROUND

2. On September 19, 2000 the Federal Communications Commission received a confidential complaint indicating that WCIN was operating with power in excess of that authorized during daytime and nighttime hours.

3. On September 26, 2000, an agent from the FCC's Detroit Office monitored and made field strength measurements of WCIN. On September 27, 2000, the agent again made field strength measurements and then inspected radio station WCIN. Violations were found that included failure to have a record of the efficiency factor "*F*" used to determine the operating power and operating with power in excess of 105% of the authorized daytime and nighttime power limit.

4. On November 27, 2000, a Notice of Violation ("NOV") for sixteen rule violations was issued to J4 and on December 7, 2000 the Detroit Office received a written response with additional information received from J4 on December 26, 2000.

5. On November 7, 2001, the Detroit Office received another confidential complaint indicating that WCIN was operating with power in excess of that authorized.

6. On January 16, 2002, agents monitored and made field strength measurements both prior to and after sunset, of WCIN. The next day, January 17, 2002, agents again made field strength measurements both prior to and after sunrise, and inspected radio station WCIN. The agents found that the station was operating pursuant to an expired Special Temporary Authorization ("STA"). The STA authorized WCIN to operate with a daytime non-directional power of 250 watts and a nighttime non-

¹ 47 C.F.R. §§ 73.51(e)(2) and 73.1560(a)(1).

directional power of 15 watts. During the monitoring periods on January 16th and 17th, 2002, no power level changes occurred during daytime and nighttime operation modes. At all times throughout the monitoring period, the field strength measurements taken by the agents indicated that WCIN was operating above 105% of the power during daytime and nighttime operation. Using the indirect method of power determination, the station was operating at approximately 828% (2070 watts) of the daytime power of 250 watts and approximately 13,800% (2070 watts) of the nighttime power of 15 watts indicated in the most recent expired STA that expired on December 13, 2001. Additionally, the station did not have a record of the efficiency factor “F” used to determine the operating power, station personnel were not monitoring the station’s operating power and, the station personnel did not know how to determine the station’s operating power or how to properly switch to nighttime power.

7. On January 22, 2002, J4 sent a letter to the Detroit Office addressing some of the violations reported to J4 at the time of inspection.

8. On March 22, 2002, a NOV for fourteen rule violations was issued to J4 and on April 5, 2002 the Detroit Office received a written response, indicating corrective actions they were taking.

III. DISCUSSION

9. Section 73.51(e)(2) requires that a record of the efficiency factor “F” be kept in the station records. Section 73.1560(a)(1) requires that a station not operate in excess of 105% of the authorized power.

10. Based on the evidence before us, we find that J4 willfully² and repeatedly³ violated Section 73.51(e)(2) for failing to keep a record of the efficiency factor “F” in the station records and Section 73.1560(a)(1) for operating with power in excess of 105% of the authorized power. *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) (“*Forfeiture Policy Statement*”)⁴, sets the base forfeiture amount at \$1,000 for failing to maintain a record of the efficiency factor “F” in the station records (required records), and \$4,000 for operating with power in excess of 105% of the authorized power (exceeding power limits). In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934,⁵ as amended, (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. The record reveals that J4 has previously had a history of non-compliance, including a repeat of these violations from prior inspections and the violations are egregious. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a five thousand dollar (\$5,000) monetary forfeiture is warranted.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term “repeated”, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80 of the Rules⁶, J4 Broadcasting of Cincinnati, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of five thousand dollars (\$5,000) for willful and repeated violation of Sections 73.51(e)(2) and 73.1560(a)(1) of the Rules.

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, J4 SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232360007, FRN: 0004-2892-60.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE the NAL/Acct. No. 200232360007, FRN: 0004-2892-60.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷

17. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to J4 Broadcasting of Cincinnati, Inc., 3540 Reading Road, Cincinnati, Ohio 45229.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office, Enforcement Bureau

⁶ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

⁷ See 47 C.F.R. § 1.1914.